

**IN FACTFINDING PROCEEDINGS PURSUANT TO  
CALIFORNIA GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3**

FF-607

In the Matter of a Dispute between

**Contra Costa Community College District**

and

**United Faculty.**

|  
| **REPORT OF**  
| **FACTFINDING PANEL**

| March 31, 2005  
| PERB Case No. SF-IM-2564-E

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**FACTFINDING PANEL:**

Katherine J. Thomson, Impartial Chairperson, El Cerrito  
Henry C. Levy, United Faculty Panel Member, Oakland  
Ronald W. Bennett, District-Appointed Panel Member, Sacramento

**APPEARANCES:**

On behalf of the District:

Peter Lucey, Atkinson, Andelson, Loya, Ruud & Romo  
Doug Roberts, Acting Vice-Chancellor of Finance and Administration  
Eugene Huff, Acting Vice Chancellor of Personnel Phyllis Gilliland,  
Vice Chancellor of Planning and Development Carol Maga, Senior  
Dean, Diablo Valley College

On behalf of the United Faculty:

Stewart Weinberg, Weinberg, Roger & Rosenfeld  
Irene Menegas, Chief Negotiator  
Sue Shattuck, President  
Brad Nash, Faculty  
Fletcher Oakes, Faculty  
Steven Padover, Faculty  
Michael Anker, Faculty  
Deborah Dahl Shanks, Faculty

## **I . BACKGROUND**

### **A. District Description**

The Contra Costa Community College District is a public school employer within the meaning of Section 3540.1 (k) of the Educational Employment Relations Act. It is the second oldest and the eighth largest community college district in California. It serves a population of approximately 950,000 in Contra Costa County. The District has an enrollment of approximately 30,000 students in three colleges and two outreach centers. In addition, the District recently opened a Regional Training Institute.

The District employs approximately 490 full-time faculty represented by the United Faculty, which has been recognized as the exclusive representative of the faculty unit under Section 3540.1(1) of the EERA. The District also employs 445 classified employees represented by Public Employees Local 1, 88 managers, 16 confidential employees, and 42 supervisory/analyst employees.

### **B. Procedural History**

The District and the Faculty are parties to a collective bargaining agreement, originally effective July 1, 2000 through June 30, 2003, but which was extended. After compliance with the public notice provisions of Government Code Section 3547, the parties reopened the contract on salary, benefits and six additional articles in February 2004. They met approximately twelve times prior to impasse without reaching any tentative agreements. The District declared impasse on May 28, 2004.

The District and the Faculty met with a mediator four times in September and October 2004. On November 5, 2004, the mediator certified the matter for factfinding. The parties stipulated before the hearing that they were properly before the Panel and waived the statutory timelines for hearing and for issuing a report.

The Panel conferred in executive session on January 18 and 24, 2005. The Factfinding Panel conducted a hearing with the parties on January 25 and 26, 2005. The parties had a full opportunity to introduce relevant data and exhibits, and present oral testimony and argument. The parties agreed to present testimony on salary, health benefits, retirement health benefits, and scheduling, but relied solely on written evidence in binders given to the Panel for the remainder of the issues. The Panel met again with the parties in an attempt to mediate an agreement on February 10 and 16, 2005. The United Faculty informed the Panel that it would present the District's most recent offer to its members, but would recommend that they vote against the proposal. When it appeared that the vote would not in fact take place, the Panel issued its report after again conferring in executive session on March 18.

## II. ISSUES

The following issues, most of which contain many sub-issues that are explained below, were submitted to the factfinding Panel:

- Salary for the 2004-05 academic year
- Health and welfare benefits for the same period
- Retiree health and welfare benefits
- Scheduling
- Load banking
- Part-time faculty re-hire rights
- Multiple load credit
- Work week of non-instructional personnel
- English composition class load
- Professional responsibilities
- Evaluations/Due Process
- Divisions/Departments

The District attempted to submit the issue of contract duration to the Factfinding Panel. However, the issue had not been raised in the negotiations prior to mediation and the Faculty would not stipulate to include the issue among those considered by the Panel.

The District raised an ability to pay argument.

### **III. ANALYSIS AND RECOMMENDATIONS**

The issues of salary, health and welfare benefits, and retirement health benefits will be discussed together because their combined financial impact bears on the District's ability to pay. **A. Salary**

The District has demanded that all faculty salary schedules be reduced 7 % effective retroactively to July 1, 2004.

The Faculty's position is that no salary reduction is necessary. In particular, no reduction should be made to the hourly rate of part-time temporary faculty.

#### **1. Comparability**

a. Full-time faculty - The District and the Faculty did not agree on the appropriate districts to use in comparing salaries of faculty members. The Faculty chose to compare its salaries to community college districts in the Bay Area 10, which include Chabot-Las Positas, Ohlone, Peralta, Marin, San Francisco, San Mateo, Foothill-DeAnza, West Valley-Mission and San Jose-Evergreen districts. The District included all of these except Ohlone; in presenting 2002-03 data from a database compiled by School Services of California, it added the Fremont-Newark, Gavilan and Cabrillo districts. The District culled more recent data from current collective bargaining agreements from Marin, Solano County, San Joaquin Delta, San Mateo, West Valley, Chabot-Las Positas and San

Jose-Evergreen college districts. Some of these districts are sufficiently nearby that they would compete with the District for potential faculty members, even though they are not in areas that experience as high a cost of living as most of the Bay Area 10 districts.

The highest-paying column of the full-time faculty salary schedule is for those with a doctorate, a master's degree and 60 additional units, or a bachelor's degree and 90 additional units. Other districts in the Bay Area 10 have an additional column for those who have earned a doctorate. The Faculty compared the salaries for all steps of the highest paying District column to the salaries on the steps of the highest non-doctorate column on the salary schedules of each of the Bay Area 10 districts. This is a relevant consideration, as the District showed that nearly two-thirds of the full-time faculty is on this last column of the schedule. Many of the comparison districts have not settled on 2004-05 salaries, but the evidence shows that the faculty's current salaries are fourth highest often at the lower steps of the column and third highest at the higher steps. (Un. Ex. 4, p. 10.) The average salary at the highest non-doctorate step is \$85,835. The District pays \$87,648.

The District was unable to obtain full data for all its comparative districts for 2002-03 salaries. Of the additional three comparison districts, one, Fremont-Newark, pays higher salaries than the District at minimum and intermediate and high salary levels. Another pays higher than the District except to faculty with doctorates. (District p. 211)

The District presented more current information on the highest attainable faculty salary for seven districts. Of the seven, the District's salaries are second highest. (District pp. 216 A, B and backup materials.) Information on an intermediate salary did not compare faculty with the same education and years of experience and will not be

considered. Faculty at the low ranges of the schedule are in the bottom half of comparable districts. (District pp. 216 A, B)

A seven percent salary decrease would place the District's faculty salaries in the highest nondoctorate column at fifth or sixth rank out of the Bay Area 10 districts, except for faculty at the highest nondoctorate step, who would fall to eighth rank with an annual salary of \$81,512. Even among the District's comparison districts, the faculty at the highest obtainable salary would fall to sixth of seven. This salary would be below the 2002-03 statewide average salary of \$83,864 for an instructor with a doctorate on the highest step of the schedule, but slightly above the 2002-03 state average highest nondoctorate salary of \$80,741. (District p. 211)

b. Part-Time Temporary Faculty - The pay rates of part-time faculty, however, are not as uniformly competitive with part-time wages in other districts. The District's \$85 per hour maximum rate payable to part-time faculty ranks fourth in the Bay Area 10, significantly behind the San Francisco and Marin districts, which pay over \$100 per hour (Un. Ex. 4). The \$64.34 mean hourly rate actually paid to the District's part-time faculty ranks sixth of nine. (No mean hourly information was available for the San Jose-Evergreen district.) (Un. Ex. 7)

A significant number of District faculty have retired in the last few years, and part-time faculty have been used to replace them, at least temporarily. About 1,000 part-time faculty now teach about 42% of the classes in the District. Part-time faculty testified that even at the current rates, the District cannot find enough part-time instructors, particularly in the sciences.

A 7% decrease would place the District's part-time instructors in eighth rank among Bay Area districts, as measured by mean hourly rates, and sixth as measured by

maximum rates, but they would still be paid more than in the nearby Solano and San Joaquin districts.

## **2. Cost of Living Increases**

The Consumer Price Index for the Bay Area has increased 25.3 % since 1997-98. During that time the sum of the faculty salary increases was 24.1%. (Un. Ex. 4, p.9)

The Cost of Living Adjustments to base revenue provided to the District by the State from 1999-00 to the present total 13.6%. (District p. 221) The salary increases over the period were 18.86%.

By either measure the salaries of unit members have kept pace with the rising cost of living, even without receiving a salary increase since 2002-03. However, a pay decrease of 7% would put them behind.

## **3. Part-time Faculty Equity Funding**

The Faculty presented evidence that the state provides funding for boosting the part-time temporary faculty salary schedule. Part-time equity funding was used to increase the salary schedule in about 2002. (Un. Ex. 7) In this District, however, full-time faculty teaching extra classes are paid for overload classes on the same schedule, thereby using some of the money intended to increase the compensation of part-time instructors. Due in part to the greater experience of full-time faculty and because of a maximum part-time beginning pay rate, full-time instructors teaching an overload are paid an average of \$77 per hour compared to the average part-time hourly pay of \$64. (Un. Ex. 7) Part-time faculty pay constitutes about 40% of total faculty salaries.

## **B. Health and Welfare Benefits**

The District has demanded that its contribution to health and dental premium costs be

capped at the amounts it contributed in 2003-04.

The Faculty proposed that the District cover the full cost of the health and dental premiums. It also proposes that a labor-management committee be established to study cost containment.

## **1. Cost to the District**

For full-time faculty members, the District currently pays 100% of the premium for the Kaiser, Health Net-Plan 9B, Health Net Elect, and Delta Dental plans. For part-time faculty who teach at least a 30% teaching load for two semesters, the District pays a percentage of the average health plan premium contribution plus dental contribution based on the percentage of a full-time load the instructor is teaching. For those eligible part-time instructors teaching less than a 50 % load, the District pays 50% of the health and dental premium as long as the state provides funding to assist the District under AB 3099. For those teaching over 50%, the District pays the same proportion as the employee's teaching load. Some long-time temporary faculty are eligible if they teach at least 20% load.

The District's presentation indicated that the increased cost of paying all unit medical and dental premiums for 2004-05 year is \$560,000, a 12% increase over the prior year. (District p. 82) This amount is equivalent to a .93% salary increase. The District has projected a 15% increase for the 2005-06 year.

The Faculty presented evidence that the parties implemented plans in December 2003 that tripled copayments to \$15 per office visit in an attempt to decrease utilization, but no significant results from the increased copayments have been detected to date.

## **2. Comparability**

a. Full-time faculty - The District compared its health and welfare benefits to



those of the San Mateo, Cabrillo, Gavilan and Fremont-Newark districts, as well as the state average in 2002-03. It also compiled data from the most current contract language of the same seven other districts as in the salary comparison group. The 2002-03 comparisons were made using the maximum contribution the District would make for benefits and the average District contribution. The recent contracts were used to show the existence of employee contributions to premium payments in other districts.

In three of the seven other districts, West Valley, Foothill, and Solano, employees make no contributions to benefits. (District p. 216A-I) The Marin district pays an amount up to the Kaiser family rate for each employee. San Joaquin-Delta district caps contributions for all health and welfare plans at 10 % of district expenditures. The Chabot-Las Positas district contributes an amount equal to the premium for the most expensive HMO plan. The San Jose-Evergreen contains a maximum contribution for each plan, but the high maximums indicated the cap may be set at the actual premium rate. In any case, increases in premiums in San Jose would appear to be paid by the employee until the maximums are renegotiated.

Based on the few 2002-03 comparisons, the District's average contribution and maximum contribution are not higher than the comparative district average, although they are higher than the state average. (District p. 213) These comparisons suggest that the plans the District provides are not as expensive as, and may offer fewer choices or higher copayments than, plans available to employees in some other comparable districts.

Implementation of the District's proposal to cap medical and dental premium contributions at 2003-04 rates would put District faculty in the lower tier of districts with respect to health premium contributions, although the evidence does not show how their contribution amounts would compare with others who contribute to premiums.

b. Part-time temporary faculty - The District provided information from the most recent collective bargaining agreements for seven districts, not including the San Francisco district. Districts vary widely in their provision of district-paid premiums for part-time instructors. The Solano and West-Valley-Mission districts pay nothing for part-time temporary employees; San Joaquin and San Jose pay only for the rare temporary employee who is teaching more than a 60% load. Foothill, Marin, and Chabot districts are the most comparable, although they make no contribution unless the adjunct faculty carries at least a 40% load. Foothill pays full medical premiums for employee and dependents for those teaching at least a 50% load and 50% of the premium for those at .4 to .49 load. Marin pays up to the Kaiser employee-plus-1 rate and provides some dental reimbursements for adjunct faculty who teach at least 40%. Chabot pays 50% of only the medical premiums for employee and dependents if the employee teaches at least 40% load, and makes pro rata contributions for those who teach at least a 50 % load. (District pp. 216-A-l) The Faculty asserted that nine of the other Bay 10 districts offer some benefits for part-time faculty, but did not place any further information in the record to support its assertion.

In sum, more temporary faculty in this District are likely to be eligible for benefits than in the other seven districts and eligible employees receive dental benefits, not just medical. However, Foothill pays full, rather than pro rata, medical premiums for those with at least a 50% load, and a part-timer at Marin can receive fully paid benefits for Kaiser for one dependent. A cap on District-paid premiums at the 2003-04 level would cause District part-time unit members to make higher contributions, but would not significantly change the value of the benefits as compared to the other districts on which there is information in the record.

## **C. Retirement Health Benefits**

The District proposed that a faculty member hired after July 1, 2004 would not be eligible for retirement health benefits.

The Faculty proposed no change in retirement health benefit eligibility.

### **1. Comparability**

For full-time faculty retiring after July 1, 1984, the District pays an amount equal to full Kaiser and Delta Dental premiums for the employee and 50% of the premiums of dependents for the life of every employee who retires after reaching age 55 as long as the sum of the employee's age and years of service is at least 80. Half of the contributions are paid for those with at least 10 years of service if their age and years of service total 70. Benefits for a surviving spouse or dependent are paid for six months after the employee dies. The District pays Medicare Part B premiums for those enrolled in Medicare Part A.

Like this district, many districts have pared down the benefits available to more recent employees as health premiums have skyrocketed over the last 20 years. For purposes of addressing whether retirement health benefits should be eliminated for new employees, comparisons will be made to benefits available to new hires in other districts.

Of those districts for which there was information in the record, only the West Valley-Mission and San Jose-Evergreen districts do not make a contribution to retirement health benefits for employees at least to the age of 65, age of eligibility for Medicare, or for ten years after retirement. (District pp. 216 A-1, and backup materials) Most require a minimum age of 55 and 15 years of service to be eligible for any district contribution. Of the districts that provide benefits for the life of the retiree, San Joaquin-Delta requires 22 years of service before the retiree is eligible for benefits; the retiree's contribution is

frozen at the amount he or she was making at the time of retirement, if any. Chabot-Las Positas requires 85 age-plus-years-of-service points for the maximum District contribution (100% of most expensive HMO rate for retiree and spouse), but provides a 25% contribution for those at least age 55 who have 70 points. As measured against these particular districts, the District provides its new employees a better retirement health benefit program than all but the relatively equivalent benefits offered by Chabot-Las Positas.

## 2. Cost to the District

Retiree health benefit premiums in 2004-05 are costing about \$5.3 million. The District provided a liability valuation of \$194.3 million for retirement health benefits of employees hired prior to July 1, 2004. The District has about \$25 million already set aside for payment of retirement health benefits, but pays current retiree premiums out of the General Fund. (District Tab 7C, p. 96) The District did not provide a valuation that assumes current retirement health benefit eligibility rules would continue. It did show that, if benefits were cut off at 65 for post-July 1, 2004 hires, an additional \$17.3 million would accrue for the projected new hires over the next 30 years. (District p. 96)

New governmental accounting standards will require the disclosure of this liability on financial statements of governmental entities beginning in 2006-07. However, there was no evidence presented that the governmental entities will be required to fund such liabilities at any particular level. Nevertheless, the District plans to increase its annual funding for the retiree benefits designated fund to \$5 million, rather than \$1 million it is planning to contribute this year.

The District has proposed eliminating retirement health benefits eligibility for employees hired after July 1, 2004, undoubtedly due to legal constraints on eliminating

retiree health benefits rights for current employees. Because new hires cannot possibly qualify for retiree health benefits for at least 15 years, this proposal would save no money for 15 years. Most faculty hired this year would not be eligible for 20 to 30 years. The only fiscal effect this proposal has is to establish a finite liability.

#### **D. Overall Compensation**

It is difficult to compare overall compensation, including salary, health and welfare benefits, and retirement health benefits because the evidence for comparison districts is not complete. For example, Ohlone College pays some of the highest salaries, but no information was available about its active employee or retiree health benefit program. Nevertheless, some information can be gleaned from the various presentations.

Salaries in the Fremont-Newark district were about \$5,000 higher annually than in the District in 2002-03. (District Tab 10, p.211) No details are available about active or retiree health benefits, but the Fremont district made a higher average contribution to employee benefits than the District. Retirement health benefits are available to Fremont retirees until age 65, but the maximum Fremont district contribution to retiree benefits was much lower than that of the District in 2002-03. (District p. 213) In both districts, salaries and benefits for all personnel accounted for 82% of total expenses, consistent with the state average. (District p. 216)

The Foothill-DeAnza district pays higher salaries than the District, at least to those in the highest non-doctorate column of the schedule. The Foothill district pays 100% of the full-time faculty health benefits premium. Those employees hired before July 1997 appear to be eligible for lifetime benefits at full cost to the district, but the district-paid premiums are capped for those hired after July 1997, and benefits are

available only until eligibility for Medicare. Salary and benefits for all personnel in the Foothill district constituted 85% of total expenses in 2002-03. (District p. 216)

Chabot-Las Positas provides comparable retirement health benefits as the District, and will pay for active employees a contribution equal to the most expensive HMO. Its salaries are about average when compared to the Bay Area 10, and run about \$3,000 to \$5,000 less annually than District salaries in the highest nondoctorate column of the schedule. Still, its total salary and benefit expenses constituted about 83% of total expenditures in 2002-03. (District p. 216) The Chabot faculty have received a 3.44% increase since that time. (District backup materials for pp. 216 A-I)

In sum, faculty at the District enjoy relatively high total compensation, but not so high that it causes the District to expend extraordinary amounts for salary and benefits. At least in 2002-03, salaries and benefits for all District personnel accounted for 82% of total expenses, while the comparative district average was 84% of total expenses. (District p. 216)

#### **E. Ability To Pay**

The District asserts that it will spend \$4.7 million more than its revenues in 2004-05 if the faculty do not take a 7 % decrease in salary, retroactive to July 1, 2004. (District Tab 6, p.73) Even with a 7% decrease for all employees, the District projects it would run a deficit in 2004-05 of nearly \$600,000. (District Tab 6, p. 76) In the Spring of 2003, the District was placed on the Community College Chancellor's "watch list" because the Chancellor's office determined that the District was in danger of serious financial problems within two to three years.

This year, health benefit premiums increased by about \$2 million. Automatic increases in salary due to years of service and additional education (step, column and longevity increases) cost the District an additional \$1 million, and contributions to the Public Employees Retirement System increased. Increases in other costs, such as utilities, are causing the District to spend down its reserves.

In normal years, the District's revenues are increased by cost of living adjustments (COLAs) to the base apportionment revenue provided to the District by the State. The COLA for 2004-2005 is 2.41%, about \$3 million. Often there is also higher revenue from student fees and state growth funding due to increasing enrollment. However, because of several factors, this District had a dip in enrollment in 2003-04 that has not rebounded (District p. 223), and therefore has not received growth funding from the state. The Faculty blames the declining enrollment on District decisions in Spring 2003 to cut about 500 classes. In addition, the enrollment decline is due partly to a state decision to cease counting students concurrently enrolled in high school physical education classes. Increased student fees may also be retarding enrollment growth. Regardless of the cause of declining enrollment, smaller numbers of students causes the District to receive less revenue. This year the state has allowed the District to receive "stability" funding, which apportions the same level of state funding as last year in order to help districts through temporary enrollment dips. However, the stability money will not be available to the District next year.

In addition, another large source of state revenue decreased in 2004-05. The District received almost \$1 million less in Partnership for Excellence funding than it had the previous year, an amount equivalent to .8 % of the base apportionment revenue. (District p. 224)

Unfortunately, this is not the first year that the District has had to contend with increased costs, but little or no increases to revenue. In 2003-04, there was no cost of living adjustment to the base apportionment revenue, even while health benefit and utility costs increased and step, column and longevity increases were paid to employees. Since 2001-02, when the District received over \$8 million in PFE funding, it has received approximately \$1 million less each year for three years. (District. p. 224) When all sources of revenue (both unrestricted and restricted by the funding source) to the general fund are considered, the District's revenues for 2002-03 decreased .17% and its revenues for 2003-04 decreased .34%. (Un. Ex. 1, p. 10)

To avoid drawing down the reserve in its unrestricted general fund to about 1%, far below the state guideline of 5%, the District in 2004, froze \$6 million in designated funds that it had given to the colleges to spend for various programs, but which had not yet been spent. It also announced that it would not grant any sabbatical leaves to faculty members, thereby saving about \$800,000.

The Faculty contends that the governor's 2005-06 budget would provide an 8 % increase in funds that would alleviate the District's financial problems, some of which is contingent on a new statewide accountability program. However, the governor's budget, which actually provides a 7.4% increase to the California Community Colleges, shifts costs to the District by requiring it to pay an additional amount equal to 2% of faculty salaries into the State Teachers Retirement System, about 1% of base funding. (Un. Ex.



6) In addition, 3% of the increased funding is for growth in enrollment, but growth funding will not go to the District because its enrollment has fallen in recent years. Not only will the District not be eligible for growth funding, it estimates it will receive \$1.78 million less in enrollment-based revenues, a 1.4% decrease in base funding. The actual increase to revenues will be about 1.4%, about \$2.5 million. Health benefit premiums alone are expected to increase about \$2.2 million and salary schedule movement will cost another \$1 million. (District p. 73) In sum, expected revenue increases next year will not be sufficient to cover this year's deficit spending or even next year's projected increases.

The Faculty asserts that the District's finances are not as dire as presented. First, the Faculty asserts the District has a history of overestimating General Fund expenses, particularly in the last few years. Prior to 2000-01, budgeted expenditures exceeded actual expenditures by less than 2%. But, in 2000-01 and 2001-02, the District spent 5.67% and 6.8% less than budgeted. (Un. Ex. 1) Figures were not presented for 2002-03 or 2003-04.<sup>1</sup> It is difficult to extrapolate from this data for two reasons. It does not cover recent years, and those budgets were prepared by financial officers who no longer work for the District. The Panel cannot conclude from this evidence that the District is currently overbudgeting expenses by 5% to 6%.

Second, the Faculty believes that more revenue is coming into the District this year than was projected in the 2004-05 Adopted Budget. The District's Statement of Changes in Fund Balances for the unrestricted General Funds as of December 31, 2004, (Un. Ex. 2), showed that the District had received 64% of its budgeted revenues, even though the year was only half over. For example, the budget assumes that \$1.2 million in local property taxes received in the prior year will be recaptured by the state under its

apportionment formulas, but the state has not yet accounted for the recapture. The District has more than half the budgeted revenues even though 98% of the lottery revenues have not been paid to the District. In the previous three years, the District had received only 50% to 52 % of budgeted revenues by December 31. (Un. Ex. 3)

The District countered that the year-to-date revenues were high in December because all equalization money to which the District is entitled had come in during the first half of the year and enrollment was somewhat higher than expected. The equalization and lottery amounts are approximately equal. In addition, new funding formulas adopted for 2004-05 result in a greater proportion of program-based funding coming from the state than in past years, and less from property tax revenues. (Un. Exs. 2, 3) Acting Vice Chancellor of Finance Doug Roberts testified that more than half of state apportionment revenues are paid in the first half of the year.

The greatest portion of revenues is program-based revenue from state apportionment, enrollment fees, and local taxes. On December 31, 66% of this revenue had come in, a higher percentage than in previous years. However, even if local tax revenues are higher than budgeted, state apportionment will be adjusted downward because the District's program-based funding is fixed by stabilization rules, and this year's actual enrollment is not higher than enrollment for 2003-04, on which the stability funding is based (District p.223). In other words, even if extra money comes in, it will not be "earned" by enrollment and will be recaptured later. It will not be available for expenditures.

The Faculty also presented evidence that total District net assets increased by \$1.2 million from 2001-02 to 2002-03. More than half of this increase, however, occurred in

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<sup>1</sup> At the time of the hearing the audited 2003-04 statements had not been prepared.

capital assets or restricted assets not available for salary and benefits payments. (Un. Ex. 1, p.5) There are assets available in two designated funds, \$5.5 million in a fund to pay accrued compensated absences and \$26 million in the retirement health benefits fund. Designated funds are not restricted by an outside funding source, but are set aside by the governing board for a specific purpose, here, to set aside money for future liabilities.

None of the Faculty's assertions convince the Panel that the District does not have a financial problem. Although the District clearly has assets, revenue increases have not kept up with spending increases, and the District is engaged in deficit spending that cannot be sustained while the District waits for revenue increases to match its expenditures.

The Faculty argues that the District's real problem is misplaced priorities. It presented evidence that the District has increased spending on administrative salaries at a much faster rate than on faculty salaries. Between 1998-99 and 2003-04, faculty salary expenditures increased 26.6%. La the same period of time, salaries for managers, supervisors and confidential employees increased 44.4%. (Un. Ex. 4)

The Faculty presented a comparative analysis of number of administrators per full-time equivalent student from data obtained from the California Community Colleges Chancellor's Office. In Fall 2003, the District had 110 students for every administrator, 25.5% below the state average of 139 students per administrator. (Un. Ex. 4, pp. 2-3) A similar comparison of faculty-to-administrator ratios showed that the District had about 8 full-time faculty members for every administrator, about 27% higher than the statewide average of 10. The Faculty estimates that a decrease of 28 administrators, which would place the District at about the state average, would save the District at least \$2 million.

The District's evidence indicated it had budgeted 9.6 fewer full-time equivalent managers in 2004-05 than in 2003-04. (District Tab 7 A, p. 81 A) The District explained that large numbers of supervisors and analysts were hired in 2002 to administer the PFE money, but that the District is evaluating how many managers and supervisor/analyst positions it needs now that PFE funding has decreased nearly 40%. The number of supervisors/analysts grew from 2 in 2000-01 to 41 in 2003-04, and no positions have been eliminated despite the decline in funding. (District p. 81A)

The Faculty attributes some of the increase in management costs to a District decision to reorganize responsibilities and hire Division Deans, who are educational management employees, rather than use Division Chairs, who were faculty acting in a temporary management position. The Faculty charges that the insertion of Division Deans into the management structure exerted pressure for "title creep" whereby some deans became vice presidents and salaries increased accordingly.

The Faculty also believes that the District is losing money on a Regional Training Institute that could be better spent by maintaining employee wages and salaries. In 2002-03 and 2003-04, the District spent \$1.2 million for the RTI, but received revenues of only \$98,000 in 2002-03, its first year of operation, and \$542,000 in its second year. The District anticipates revenues of only \$387,000 this year, and has cut its expenses accordingly. However, lease expenses of \$107,000 cannot be trimmed, and the District will still spend a total of \$860,000 on the RTI this year. (Un. Ex. 4, p.7)

## **DISCUSSION**

The District indisputably has a financial problem. Although it has already decreased pay for all other employees in the District by 7%, frozen faculty sabbatical

funding, frozen campus funds, and cut 10.6 managerial positions, it will spend \$4.7 million more than its revenues this year if there is no further cost-cutting. A focus merely on keeping the District's reserves at 5% would require savings of an amount equal to a 3.75% faculty salary decrease for the entire 2004-05 year, but would not be sufficient to prevent deficit spending. Due to declining enrollment and the governor's proposed cost-shifting, revenue increases next year will not be sufficient to reverse the trend of deficit spending even if the District implements the \$2.25 million in current-year cost reductions necessary to maintain a 5% reserve.

To avoid deficit spending this year, the District would have to cut from its budget an additional amount equal to a 7.9% decrease in faculty salaries. The District's proposal of a 7% salary decrease and cap on benefit contributions amounts to approximately the total needed to avoid deficit spending.

For several reasons, however, requiring the faculty to contribute all further savings would be unfair. The Faculty has already lost the equivalent of a 1.3% salary decrease in sabbatical money. Not only will eligible faculty not be able to enjoy this benefit this year, the failure to grant sabbaticals will undoubtedly affect the number of eligible faculty and the competition for sabbatical leaves for the near future. So far, this is a one-time savings for the District, but it is a loss to the faculty nonetheless.

Second, no other employee group has been asked to take more than a 7% reduction in compensation. A greater reduction for faculty might be appropriate if the faculty had better fringe benefits or in some other way had a disproportionate cost impact on the District. However, there are several indications that it is not the faculty unit that is disproportionately expanding District costs. All employee groups have the same health and welfare benefits. All have received the same salary increases over the years, but

faculty salaries were the slowest growing salary group between 1998-99 and 2003-04. During that time, faculty salary expenditures increased 26.6% while total salaries for managers, supervisors and confidential employees increased 44.4%. (Un. Ex. 4) Faculty salaries are not high compared to faculty in Bay Area districts; most District faculty earn a salary that is only 2% to 4.5% higher than their average Bay Area peer with similar experience and education. It is growth in management and supervisory positions and salaries, not faculty salaries, that is consuming an increasing share of the budget.

Third, the combination of a 7% pay decrease and a premium contribution would clearly place the faculty in the lowest half of comparable districts. This would place the District at a competitive disadvantage in attracting new faculty, a concern that will soon become highly relevant. There have been about 50 faculty retirements in the past couple years and many more are eligible to retire soon. Although the District has been replacing regular full-time faculty with lower-paid temporary faculty, the District cannot continue this trend. State law prohibits a district from using temporary faculty to teach more than 25% of credit instruction, and the state has recently indicated that it will begin to enforce the standard with monetary penalties in 2006-07. The District will need competitive compensation to hire sufficient full-time faculty. Beginning salaries for those with minimum education requirements are already in the lower half of surrounding districts. (District p.216A-B and supporting materials.)

For these reasons, anything more than a 4.5% reduction would be unwise for the District and unfair to the faculty. The Panel finds that making the reduction effective October 1, 2004, along with the premium contribution discussed below, would provide sufficient savings to the District to enable it to maintain a 5% reserve this year and curb further deficit spending, while giving the District time to plan further budget cuts next

year. Because there may be obstacles to "retroactive" salary decreases, the Chair is recommending a 13.5% decrease effective for salary earned April 1 through June 30, at which time the current faculty salary schedules will be decreased only by 4.5% until an increase is negotiated by the parties. The Panel recommends the parties explore ways to accomplish the salary savings of over \$2 million without such great hardship for the faculty.

The Chair is also recommending a 5% premium contribution from each faculty member beginning April 1, 2005. In at least half of the districts for which the Panel had information, faculty make some contribution for benefits, although in some districts it is possible to avoid any contributions by selecting the lowest-priced health maintenance organization. However, it is unclear from the record how much those contributions are. A cap on benefits at the 2003-04 level, which amounts to a 12% employee contribution this year, may be a higher contribution than required in other districts. In addition, having to renegotiate caps each year would only add to the number of items the parties would have to wrestle over. A set standard that can continue without annual negotiations would likely benefit the parties' relationship. To ensure that the District's compensation remains competitive, and in light of the recommendation that the faculty take a huge cut in salary for the remainder of this academic year, the Panel is recommending a small employee contribution for the remainder of this year.

The Panel also recommends that a labor-management committee be established to make recommendations to the parties concerning greater cost-sharing for health benefits. It could be, for example, that the parties would find it most appropriate to use a common approach to benefits that provides at least one fully-paid plan and requires contributions from those on other plans whose premiums are higher than the family rate of the lowest

priced plan. This kind of standard would not need annual negotiation but would entail substantial cost-sharing by those on more-expensive plans. Without further evidence, the Panel was unable to determine whether such a recommendation would be appropriate in this District. **Internal Equity**

The recommendations and sabbatical moratorium amount to the equivalent of a 4.8% decrease in compensation for the Faculty this year. The District frequently emphasized that all other employees in the District had taken a 7% pay decrease for the entire 2004-05 year, although the classified employees are receiving unpaid leave in compensation for the pay cut. Implicit in the District's presentation was a suggestion that the Faculty should do the same. Evidence that the Faculty presented, however, indicates that a 7% decrease for managers still leaves them with comparatively high salaries. As of the Fall of 2003, the average salary of the District's educational administrator was 18% higher than the statewide average; the average classified administrator's salary was 21% higher than the statewide average. (Union Ex. 4, p.6) Salaries in the Bay Area are higher than statewide, but the expensive location does not explain the entire disparity. By contrast the faculty salaries in 2002-03, when they received a 6.2% increase, were only about 5% higher than the statewide average. The maximum faculty salary, which is available to those with a doctorate, a masters degree and 60 additional units, or bachelor's and 90 additional units, was 4.5 % higher than the statewide average for instructors with a doctorate and 5.7% higher than the statewide average highest non-doctorate salary. (District Tab 10, p.211) Since the faculty have not received a salary increase since then, and faculty in some other districts have received raises (District. P.216A, Un. Ex. 4, p. 10), their relative standing could only have worsened. In light of the comparatively high



management salaries, despite their lower FTES-to-administrator ratio, it is not inappropriate to take a higher percentage cut from management salaries. Moreover, if the parties agree to the recommendations in this report, the Faculty will be the first to contribute to health benefits premiums, a significant step for employees in this district.

### **RECOMMENDATION**

The Chair recommends a 13.5 % salary schedule decrease effective April 1, 2005 through June 30, 2005. The Panel recommends that on June 30, 2005, the current faculty salary schedules be decreased 4.5% until an increase is negotiated between the parties. The Panel recognizes that this is a severe cut in salaries, and therefore recognizes that the parties may wish to implement the recommended salary savings of \$2 million over the remaining three months of the year in another mutually agreeable way.

The Panel recommends that all the temporary faculty parity money the District receives from the state be used for compensation of part-time temporary faculty only and not for full-time faculty overload pay. This will mitigate the effects of the salary rollback for part-time temporary instructors, and keep their pay from sinking toward the bottom in the ranking of competing districts.

The Chair recommends that each faculty employee contribute 5% of the monthly rate for the employee's medical and dental premiums beginning April 1, 2005. Eligible part-time temporary faculty will contribute an additional amount equal to 5% of the amount of the District's medical and dental premium contributions. The Panel also recommends that a labor-management committee be established to make recommendations to the parties concerning greater cost-sharing and cost containment for health benefits.

In light of the significant reductions in compensation the Panel has recommended and the serious morale problems that would be engendered by elimination of retirement health benefits for new hires, the Panel cannot recommend such an extreme change, especially since retirement benefit elimination would not save the District any money in the short term. For new hires, the Chair recommends that the eligibility for District contribution to benefits for the spouse end at the time the spouse becomes eligible for Medicare.

## **F. Scheduling**

### **1. Substitutes**

The Faculty proposes new language that would provide that the department chair shall determine whether a substitute instructor is necessary and who is qualified to serve as a substitute instructor for a class. The Faculty proposes that the District create and fund a budget for substitute assignments. The proposed language also addresses compensation of regular, contract and part-time faculty who choose to substitute for an instructor.

The District proposes no change to the contract.

There is currently no provision in the contract concerning the selection of substitutes and no language addressing the compensation for those who serve as substitutes, other than temporary substitutes. Nor was there any presentation about the current practices concerning selection or compensation of substitutes. The Faculty's rationale for its proposal is that the faculty are experts in their subject matter and are in the best position to determine whether a substitute is needed and who is qualified to substitute teach. It may be true that the faculty should have a greater role through the

academic senate, but there was no evidence that the current practices have caused problems.

**Recommendation:** The Panel declines to change the status quo concerning selection and compensation of substitutes.

## 2. Teaching by managers.

The Faculty proposes the following changes to Article 8.4.

With the approval of the Chancellor and the College President, and the United Faculty president, a District or College manager who possesses the minimum qualifications for the discipline, may teach a maximum of one course section in the Summer, extended day or Saturday courses or sections as part of their assigned duties with salary based on class and step placement on the appropriate teaching salary schedule.—This assignment is contingent upon the certification of a committee of faculty in the discipline that the manager possesses qualifications at least equal to those of part-time instructors in the discipline and is entirely at the discretion of the department. The department is under no obligation to hire a manager in place of another qualified part timer.

The District proposes no change to Article 8.4, but does propose elimination of sections 8.4.1, 8.4.3, and 8.4.4:

8.4.1 No manager will be assigned a course requested by a contract or regular faculty member.

8.4.3 Managers shall be considered as within the available "part-time" pool, and there is no priority over other part-time applicants.

8.4.4 Paragraphs 1. and 3. are not applicable to Division Chairs.

The contract currently provides that a manager may teach with the approval of the chancellor and the college president, states nothing about minimum qualifications, restricts their teaching to extended day and Saturday courses, and provides for extra compensation. Managers may not teach a course requested by a regular or contract faculty member, and have no preference over part-time faculty. They are required to submit their schedules through the department.

The Faculty points out that managers are not assessed on their teaching ability or currency in the field when hired to manage. The Faculty asserts that state law gives the

faculty a role in faculty hiring, although the materials the Faculty placed in evidence indicate that role is played by the academic senate. The District indicates that managers go through the same process as part-time faculty when being considered for teaching, but it is not clear what that practice is. Section 6.4.3 of the contract indicates that part-time hires are subject to the same in-depth hiring process as full-time positions, in which faculty are highly involved, but that the parties may waive these procedures for part-time hires. There are currently five managers in the District who teach.

The District's rationale for its proposed changes is that restrictions on managers teaching are unnecessary and deletion of the restrictions would provide flexibility. The position of Division Chair no longer exists because of a management decision to change its management structure.

As there is insufficient evidence concerning the current part-time hiring practices, if different from the contract, that also apply to managers, the Panel is unable to evaluate the need for a stronger faculty voice in the hiring of managers as part-time teachers. The Panel is of the opinion that extra teaching hours beyond the full-time workload should be compensated, whether taught by faculty or by managers. There was no evidence that the current language preserving the work of the bargaining unit has prevented qualified managers from teaching part-time. Nor was there evidence that the current language has resulted in a significant intrusion by management on faculty unit work, or that unqualified managers have been allowed to teach under the current procedures.

**Recommendation:** The Panel recommends that, to the extent the position of Division Chair no longer exists, it be deleted from the contract. Otherwise, the Panel recommends no change.

### 3. Balancing class sizes.

The Faculty proposes deletion of a minimum enrollment of 20, and the addition of the following language:

No class will be cancelled due to low enrollment so long as there are students in other classes over the maximum that would make up the difference. Specifically, before canceling any class due to low enrollment, the college president or designee shall meet with the UF vice president and the academic senate president. The college president or designee shall provide a list of all classes with enrollment over the maximum and the current total count of how many students are enrolled over the maximum. The college president shall also provide a list of under-enrolled (less than 20 students) courses that administration proposes to cancel, a total of how many more students would have to enroll to bring each class up to 20, and a total of additional enrollments needed to bring all the classes on the list to 20. If there are more students enrolled over the maximum than enrollments needed to bring the whole list of small classes to 20, then no class will be canceled for low enrollment. If there are fewer enrollments over the maximum than would be needed to bring all the classes up to 20, this committee will vote on which classes are the lowest priority and will be canceled unless the situation improves (i.e. more students enroll over the maximum or more students enroll in small classes) before the class meets the next time. Administration retains the discretion to let any class continue despite low enrollment

8.2.4 Cancellation of sections of less than twenty (20) shall be preceded by notification to the recognized department chairperson and/or individual faculty member, of the intent to cancel. Management must reach agreement with the department chair of the affected department before any sections are cancelled for failure to reach an enrollment of twenty (20).

The District proposes no change to the language, which currently reads,

No class shall meet beyond the close of the late registration period unless the enrollment, as determined by class attendance, is at least twenty (20) students, or, an exception is made by the College President because of such special circumstances as: related training program for apprentices, advanced classes which are a part of a major sequence, performance classes, or courses where the enrollment determines the number of teaching hours credited the instructor.

The District proposes no deletion of the notification section, but proposes adding language that would require the instructor or the department to notify students of the cancellation and assist them in finding another class.

The Faculty contends that a joint decision should be made between faculty and management concerning class cancellation. The Faculty asserts that it seeks to avoid cancellation of classes in the afternoon or at other unpopular times that could bring the District revenue-producing enrollment. The basic thrust of the Faculty proposal is to balance the lesser revenue from underenrolled classes with the higher revenue from classes in which the instructor has allowed enrollment over class maximums. Faculty

members have discretion to waive the maximum class sizes in the contract, and many do. There was no evidence what the class maximums are in the contract. The Faculty asserts that the point at which the college makes money for additional enrollment is 11 students per class if a class is taught by part-time faculty, but the District disputed this calculation. The District asserts that there must be at least 30 students in a class for the revenue earned to equal the expense of teaching the class. The state funds enrollment on the assumption there will be 32 students per class.

The District introduced evidence that the contract already allows newly offered classes to continue even when there are fewer than 20 students. Low enrollment is allowed in classes that students need for transfer to four-year universities. Science classes and those in which basic skills are taught require smaller classes. Dean Maga testified that she already balances class enrollments to some extent. If several sections of a class are offered, she is more likely to cancel an underenrolled section than if the class is the only section of the course being offered. The Faculty did not dispute this assertion.

The District contends that language in the contract should recognize the shared responsibility of management and faculty to assist students affected by cancellation.

The Panel does not find sufficient justification for the strict balancing that would be required by the Faculty proposal. Nor is there justification for requiring that the faculty agree with what is primarily a budgetary decision. The contract already requires the District to notify the department chair and the affected faculty about class cancellations, which enables the faculty to consult with the District on these matters.

**Recommendation:** The Panel recommends no change.

#### 4. Unreasonable schedules

The Faculty proposed the following restrictions on schedules:

Management may not propose nor change the schedule in any way that results in any of the following:

- 8.1.2.1.1 No more than 3 consecutive lecture hours or 4 consecutive lab hours except with the agreement of the faculty member affected and in accordance with the department by-laws as indicated in 8.1.2 above.
- 8.1.2.1.2 No unit member will be required to have fewer than 12 hours from the end of one day's work to the beginning of the next except with the agreement of the faculty member affected and in accordance with the department by-laws as indicated in 8.1.2 above.
- 8.1.2.1.3 No instructor shall be assigned more than 2 new course preparations per year and no more than 1 per semester except with the agreement of faculty member affected and in accordance with the department by-laws as indicated in 8.1.2 above.
- 8.1.2.1.4 Instructional faculty members who have a split campus/center assignment shall have at least a 2-hour interval between assigned duties except with the agreement of the faculty member affected and in accordance with the department by-laws as indicated in 8.1.2 above.
- 8.1.2.6 No unit member shall be required to work on Saturday or Sunday as part of his/her regular load assignment, or to teach in the evenings (four o'clock or later).

The District proposes no change to the contract.

The Faculty argues that the schedules that would be prohibited in the first two sections are physically and mentally demanding and would likely affect teaching performance. There was little evidence of actual instances of such schedule assignments, and no indication whether the faculty member assigned to the schedule objected. There was no evidence concerning department by-laws, which may not yet exist in the District. The District did not provide any evidence concerning this proposal.

**Recommendation:** The Panel recommends that the parties add the following language to the contract:

Management may not change the schedule in any way that results in any of the following:

- 8.1.2.1.1 More than 3 consecutive lecture hours or 4 consecutive lab hours except with the agreement of the faculty member affected.
- 8.1.2.1.2 Fewer than 12 hours from the end of one day's work to the beginning of the next except with the agreement of the faculty member affected.

## 5. Distance education

The Faculty proposes adding the following language to the contract:

### 8.1.1.8 Distance Education

8.1.1.8.1 The instructor of record for any distance education course shall be the faculty member who has the task of grading students and otherwise supervising the offering of the distance education course.

8.1.1.8.2 No faculty member shall be required to teach a distance education class or provide remote student services. Faculty may satisfy their assignment through distance education or remote student services if and only if agreed to by the faculty member.

8.1.1.8.3 The District shall not schedule, sponsor, or provide a reception site for any distance education course originating from any other institution.

8.1.1.8.4 No prerecorded form of instruction shall be employed by the college to replace faculty members, in whole or part, regardless of the technology utilized, without the instructor's and department's agreement.

8.1.2.1.5 A unit member shall not be required, as part of his/her assigned workload duties, to teach on-line, distance education courses.

8.2.2.2 The first time a distance education course is taught, the class size shall not exceed twenty (20) students.

8.2.2.3 No distance education class shall be scheduled or taught without adequate technical support provided, as agreed upon by the faculty Academic/Faculty Senate or its designated college committee.

The District proposes no change to the contract.

"Distance instruction" refers to classes where some of the student-teacher contact is through technology such as the Internet. The Faculty contends that it is difficult to do distance instruction well, and that only those who are interested in distance instruction should be assigned to perform it. There was no evidence how many distance classes are taught or whether faculty who are averse to them are being assigned to teach the classes.

The Faculty also argues that the District should not use prerecorded materials without faculty approval, just as it does not hire faculty without faculty approval. State law recognizes faculty are the academic experts, although the Faculty's materials indicate the academic senate, rather than the collective bargaining representative, has the role to play in hiring matters. There was no evidence whether prerecorded materials are currently used or have been proposed for use in the District.



The District objects to the Faculty proposal to restrict the class size of distance courses because it would entail added costs to the District. It points out the proposed maximum of 20 is the minimum class enrollment, and less than the enrollment at which the college begins to make money. The contract already contains a section allowing for agreement to reduce the enrollment minimum for a class that is "innovative in . . . delivery method."

There was insufficient evidence to evaluate the justification for the addition of language governing distance education.

**Recommendation:** The Panel recommends no change in the status quo regarding distance education.

#### 6. Limits on use of part-time faculty

The Faculty proposes the following addition to the contract:

8.1.1.6 If the full-time/part-time ratio for a department is less than 70/30 of FTEF, then that department may refuse to offer sections for which there are no regular faculty. In recognition of the funding crisis anticipated by the district for 2004-5, this provision of subsection 8.1.1.6 shall go into effect only as of July 1, 2005.

8.1.1.7. When identifiable, temporary hourly faculty members shall have their names included in the class schedule for their classes each term.

The District proposes no change to the contract.

The Faculty points out that state law prohibits more than 75% of a district's instruction by part-time temporary faculty. This standard is not currently enforced. The Faculty's proposal would allow the department to make the decision how many part-time faculty would be allowed. The Faculty point out that hiring part-time instructors increases the workload of full-time faculty, who are involved in the hiring process and other

District committees on which temporary faculty often do not serve. A department that has 30% of its classes being taught by part-time instructors probably already has as many part-time as full-time instructors.

Although state law sets a standard of 75%, that standard must be met on a district-wide basis, not a department-wide basis. The District pointed out that, although it froze hiring for one year, it has now begun to hire full-time faculty again. It asserts an inflexible 70/30 rule would pose problems for some small departments.

The Panel finds that the ratio of part-time temporary faculty to full-time faculty is a staffing matter that is governed in part by state law. In light of evidence that the state may begin to enforce the 75/25 ratio in 2006-07, the Panel does not find sufficient justification to add the language the Faculty proposes.

**Recommendation:** The Panel recommends no change in the status quo.

## 7. Developing class schedules

The Faculty proposes deleting and adding the following language concerning class schedule development:

8.1.1 SCHEDULE DEVELOPMENT: Faculty, within their recognized department adhering to established division/guidelines/regulation shall:

8.1.1.1 From the course, sections, rooms and room times made available to it, the faculty prepares and recommends department schedules, through the Division Chairperson/Dean, showing individual teaching schedules including extended day, off campus, and summer offerings. Faculty may request discussion of enrollment trends and other bases on which particular courses and numbers of sections are established.

Since scheduling intimately involves academic and professional matters, faculty shall exert primary responsibility in scheduling and assignment through their department chair, department council, or other faculty designees.

8.1.1.1 Faculty prepare department schedules in consultation with the department chairperson. The schedules developed by faculty show individual teaching assignments, including extended day, off-campus, and summer offerings.

8.1.1.2 If any change (from the previous academic year/summer session/intersession) in particular courses, number of sections, or method of delivery is being considered, such changes

shall be mutually agreed upon by management and the affected department. In particular, when a reduced number of sections, rooms, or times has been made available by management, or when management has denied faculty requests for expansion, management is under obligation to present department faculty with written documentation supporting their decisions within five working days. If this documentation is unacceptable or unconvincing to faculty, faculty will petition a committee made up of the UF Vice President from that campus, the department chair, the Senate President or other faculty designee, and two managers, one of whom should be that Division's primary manager, to reach mutual agreement before classes are scheduled in that department.

8.1.2 SCHEDULE CHANGE BY MANAGEMENT: All efforts will be made by management to schedule regular and contract faculty according to the recommended schedules. Where any first (1st) level manager changes such recommended schedule, the faculty member may: ■ It First discuss with the first (1st) level manager the dispute area(s).

2. ANY MATTER REMAINING UNRESOLVED MAY BE APPEALED TO THE NEXT HIGHER LEVEL COLLEGE MANAGER.

3. Where any dispute area(s) remain after 2., above, management will assign staff to meet the District needs.

Management may propose a change in the schedule if the change is intended to provide a significantly better schedule for students. For each change, management must provide data from the previous two years to substantiate that its change will provide a significantly better schedule for students. In no case, shall a course be offered or a service be scheduled without the approval of the faculty member in the department in which the course/service is to be offered. In addition, any such changes must be in accordance with the by-laws of the department in which the course/service is to be offered, as determined by a review by the department chair, department council, or department faculty designee.

The District proposes no change to 8.1.8 or 8.1.1.1 other than deletion of the word "Chairperson." It proposes changes to current section 8.1.1.2, which sets forth criteria for development of schedules. Rather than the current criteria, which are "written rules, procedures and priorities which the faculties within their recognized department or DVC teaching area shall have established," it proposes the following criteria: "college policies, FTES goals, budgetary limitations, and department and division guidelines and procedures." The District also proposes deletion of references to the schedule of the Division Chairperson, a position that is obsolete.

The District proposes no change to Section 8.1.2 other than deletion of the first word "all."

The Faculty asserts that successful scheduling of classes occurs when needs and patterns of the students are heeded. As faculty members have the primary contact with students, the Faculty contends they are most knowledgeable about student scheduling needs, classes needed for transfer to four-year colleges, and career preparation. The Faculty asserts that departments have policies and procedures to determine the schedule that will best serve student needs. Management intrusions in this area have not improved

the District's fiscal condition, according to the faculty. There was evidence of at least one instance in which an influx of new students was anticipated but did not materialize.

The Faculty believes it should act as partners with the District in determining schedules by considering both budget and academic issues. The proposal is that faculty recommend a schedule; if there is a problem, a committee can resolve it using all available information. Consequences of poor class scheduling are declining enrollment.

Dean Maga testified that the faculty currently choose their schedules and forward them to management through the department chair. The schedule requests are changed at Diablo Valley College about 1 -2 % of the time. She also testified that the District does ask faculty for input about class offerings and schedules when there is money for growth. She also pointed out that division deans do have academic experience. In her opinion the current scheduling system works well, except that making desired changes in the schedule, such as implementing compressed classes or weekend programs, is a slow process.

The Faculty did not object to insertion of FTES goals and budgetary limitations in the criteria for schedule development, but it disagrees with basing scheduling primarily on college policies, FTES goals and budgetary limitations. It asserts that such an emphasis has led to a reduction in course offerings that has led to declining enrollment and less offering of advanced courses that are necessary for transfer or certificate programs.

The presentations did not describe the current process, but it appears from the contract that management provides a list of courses, numbers of sections, rooms, and times those rooms are available, and the department faculty decides which courses will be taught when and by whom. The Faculty would like more say in course offerings, a

subject on which the current contract only gives it a right to consultation. As the Faculty's right to consultation on educational objectives and curriculum exists in state public sector labor law, the Panel finds that information necessary for discussion on course offering should be available to the faculty.

**Recommendation:** The word "Chairperson" should be deleted from the language of current 8.1.1.1. The language of section 8.1.1.2 should include the criteria of FTES goals and budgetary limitations. The Panel recommends addition of the following language to section 8.1.1.1: "when a reduced number of sections, rooms, or times has been made available by management, or when management has denied faculty requests for expansion, management must present department faculty with written documentation supporting their decisions within five working days."

#### 8. Replacement work for cancelled classes.

The Faculty proposes the following deletion and new language:

8.2.5 Any deviation from the contractual workload of the member caused by cancellation shall be adjusted within the semester of cancellation, or, the three (3) regular following semesters after consultation with the member.

Within the Semester of Cancellation. Members who owe teaching hours will reach agreement with the department chair and the division manager to assume after consultation sufficient courses or alternative assignments in the day or extended day program to balance any deficit. If agreement cannot be reached, a designee from the president or designee of the college, the United Faculty and the Faculty /Academic Senate will select a proposal from one developed by the faculty who owes teaching hours or one developed by management. However, no member shall be required to translate an .A/C. contract to an "A" contract to balance a deficit during the semester of occurrence, unless, the member has more than one .A/C. contract assignment. In such case, one of the .A/C. contract assignments shall be used to balance all or part of the deficit.

The Faculty also proposes allowing faculty to make up load deficits with week-end or summer classes. Rather than the current language that requires "mutual agreement" to make up a load deficit with a non-teaching assignment, the Faculty proposes agreement of the college president or designee, the Faculty and the academic senate.

The District also proposes language that would require the faculty member to teach as part of his/her regular load a class originally scheduled as overload and deletion of language that would allow the faculty member to teach "overload" classes while they have an underload in a prior semester for which they have been paid full-time. The District also proposes language that would require a separated employee to repay the District for load deficits with banked load, payroll deduction, or employee payment.

The Faculty contends that a joint decision should be made between faculty and management concerning how a full-time member is to replace the cancelled class. The Faculty asserts that faculty should be allowed several semesters to make up load that is owed after a class is cancelled because of the time it takes to prepare for a class and the lack of compensation for preparation of the cancelled class.

The District contends that, although the contract allows a faculty member whose class cancelled to complete his or her load with an alternative assignment, this costs the District more than assignment to teach a class since there is no enrollment revenue for the alternative assignment.

The District contends that requiring faculty to teach A/C load classes as A load to make up an underload aligns the pay to faculty member with the workload being carried that term, saves money by not requiring overload pay to faculty who are not teaching a full load of A classes, and saves costs in future years by not allowing a faculty member to retire or leave the District still "owing" classes for which the instructor was paid but did not teach.

There was no evidence concerning the funding for summer or weekend classes in this District that would enable the Panel to determine whether the right to make up load deficits during the summer or weekends would have cost implications for the District. Because allowing a non-teaching assignment has cost implications for the District, the

Panel declines to recommend a change from the present language that requires mutual agreement for a reassigned time project.

The District's proposal does not prohibit the faculty member from making up a deficit load in later semesters. The Panel understands that adding a class on the eve of the first class meeting is burdensome to the faculty member, but does not understand why the District should be required to pay for overloads for four semesters when the unit member has a load deficit.

**Recommendation:** The Panel recommends that Section 8.2.5.2 be amended to replace the word "three (3)" with "one (1)" and make the amendment effective for load deficits that are incurred after July 1, 2005. The Panel also recommends language that would require a faculty member who retires or separates from the district with a load deficit to repay that deficit with any banked load credits the employee may have.

#### 9. New course minimum class sizes

The Faculty proposes adding the following language to the contract:

8.2.3.1 New classes and/or classes innovative in content, time offered, or delivery method, if agreed upon by the department council or department curriculum or scheduling committee, shall have a minimum enrollment of 12 for the first semester offered, and 15 for each subsequent semester up to two. These classes may not be cancelled unless they have not made these adjusted minimums, except at the choice of the department chair or department curriculum or scheduling committee.

The District proposes no change to the current language of the contract, which provides:

Before the schedule is published, if a department and management agree that a class is innovative in content, time offered, or delivery method, they shall also mutually agree on a minimum number less than 20 to avoid class cancellation. The class shall not be canceled if it has reached that enrollment number by the end of late registration. The United Faculty shall be notified of each variance. Included in the agreement will be the determination of how many semesters the class will be offered as an innovative class. Under no circumstances shall such classes be designated as innovative for more than three (3) semesters without management's approval.

The Faculty points out that developing a new class involves a substantial amount of work for which there is no extra compensation. New classes may be advisable because of advances in the discipline. Student interest may not be sufficient for a few semesters until the class develops a reputation. Canceling a new class for low enrollment may prevent it ever being offered. The Faculty proposal guarantees that new classes will not be canceled for failure to reach an enrollment of 20, whereas the current language leaves the decision subject to management agreement.

Dean Maga testified that she has allowed newly developed classes to continue with an enrollment of 15, as allowed by the contract. The Faculty did not provide evidence that management has refused to reach agreements under the current language in the case of newly-developed classes. Because there are cost implications to enrollments under 20, the Panel declines to recommend stronger language than exists.

**Recommendation:** The Panel recommends no change.

10. Bumping part-time faculty

The Faculty proposes adding the following language to the contract:

**8.2.4.1 "Bumping" Rights:**

In case of a cancelled class, contract faculty who by law must maintain a full assignment load each semester may "bump" an adjunct faculty member through the first week of classes to balance a deviation from the contractual workload. After the first week of classes and with the recognition that Article 8.2.5.1 is applicable, the college administration must offer the contract faculty member the options under either Articles 8.2.5.3 or 8.2.5.4.2 during the semester of cancellation.

In case of a cancelled class, regular faculty, seeking to complete their "A" load, may "bump" an adjunct faculty member prior to the first week of class. Once classes have begun, Article 8.2.5 shall apply.

Once classes begin, no part-time faculty member can be bumped to fulfill an overload assignment. Every attempt shall be made to ensure that Part-time faculty members maintain a load to retain benefits status.

If there is a lack of available classes, both full time and part time instructors maintain "bumping" rights over a manager wishing to teach a class in the department.



The District proposes no addition to the contract.

The Faculty explained that a part-time temporary instructor whose assignment is cancelled is paid only for the time actually spent in class and nothing for the time spent preparing for the class. Full-time faculty now have the right to bump part-time faculty if the full-timer's class is cancelled and he or she is qualified to teach the class. The Faculty proposal would protect the part-time temporary instructor from being bumped once classes begin unless the full-time faculty member has an obligation to carry a full-time load.

The Faculty also proposes that both full-time and part-time faculty have the right to bump managers who are teaching a class. This provision would make it easier for full-time faculty to complete their load and would prevent loss of income and/or benefits to part-time faculty. The Faculty acknowledged the incidence of managers teaching a class that is needed to make up the load of a full-time instructor is not frequent.

The District did not respond to this proposal.

In light of the District's desire to have faculty make up load deficits as quickly as possible, the Panel does not recommend any provisions that would deter a full-time faculty member from teaching a course to complete his or her load. For logistical reasons and financial reasons, as well as the benefit of part-time faculty, the Panel recommends that part-time faculty not be bumped by faculty seeking to teach an overload class.

Recommendation: The Panel recommends that the parties add the following language to Article 8: "Once classes begin, no part-time faculty member can be bumped by a fulltime faculty member seeking to teach an overload assignment."

## **G. Load Banking**

### **1. Eligibility of summer classes**

The District proposes that faculty members not be able to bank load credit from summer session classes.

The Faculty proposes no change to the contract.

### **2. Maximum banked load per semester**

The District proposed that unit members be entitled to bank a maximum of .2 load **per** semester rather than the current .4 load maximum.

The Faculty proposes no change to the contract.

### **3. Value of banked load**

The District proposed that the load value of an overload class be reduced to 50 % of the value it would have if taught as part of the regular load of a full-time unit member.

The Faculty proposes no change to the contract.

### **4. Professional responsibilities**

The District proposes language that would clarify that faculty who are on a reduced load due to banked load will be required to continue to participate in all other professional responsibilities.

The Faculty proposes no change to the contract.

### **5. Use of banked load credits during sabbaticals**

The District proposes changing the rate at which banked load is paid during a sabbatical from .1 load per 10% salary to .2 load per 10% salary.

The Faculty proposes no change to the contract.

Discussion: Load banking allows a full-time unit member to accumulate load credits for future use by teaching an overload or summer class without pay. Currently, when the unit member uses the banked load to carry a reduced load, the banked load is paid out at the pro-rata full-time rate, rather than the lower temporary pay rate that the

District would have paid if the overload class were not banked. Banked load can be used to increase sabbatical pay.

The District is concerned about the accumulation of liability for banked load. It also wishes to change the value of the credit that the unit member banks to save costs in future years when the banked load is used. The District also needs faculty on reduced loads to continue their full share of committee work and other professional responsibilities in order to serve students and to meet accreditation standards.

The Faculty asserts that load banking does not cost the District and in fact saves money in the short-term because it collects revenue from enrollment at the time the class is taught, but does not pay the instructor until the banked load is used. The Faculty compares this to an interest-free loan that can be invested or used to hire new teachers.

The Panel finds that the Faculty's reasoning is correct if the unit member uses the banked load before the salary rate changes. However, if the banked load is used at some time after the salary schedule changes or the member moves on the salary schedule, the class is paid for at a higher rate. The District's proposed changes to value of load credits would overcompensate for changes in salary. Its proposal appears to be aimed at capturing and keeping the savings it achieves by paying a regular instructor less to teach an extra class than it would pay the instructor to teach the same class as part of his or her regular load.

**Recommendation:** The Panel recommends that the language of Sections 7.11.1 and 7.11.9 be changed to prescribe a maximum of .2 load banking per semester. The Panel also recommends that Section 7.11.8 be amended to clarify that faculty on reduced load continue to participate in all other professional responsibilities. The Panel recommends no other change.

## **H. Multiple Load Credit**

The District proposes that the double load credit that instructors currently receive for large lecture sections be a) limited to single lecture sections with a maximum enrollment of 42 or more, b) reduced to 1.5 load credit. The enhanced load credit would not be granted unless there are at least 90% of the maximum number of students enrolled at census, a change from 75% at the close of late registration. The District also proposes loading triple lectures at 40% load and quadruple lectures at 60%.

The Faculty proposes no change to this section.

The District contends that its proposal would align workload more closely with pay and save about \$415,000. There is no evidence or explanation of a lack of alignment, however, such as how many students on average a faculty member is teaching when receiving double load credit. The District also suggests that other colleges do not provide double load credit, but there was no evidence of other contractual provisions in the record.

The Faculty asserts that the lower load credit and higher risk that a class will not qualify for extra load credit will act as disincentives to teach double load classes. Having fewer double load classes will decrease the overall productivity of the faculty.

There is insufficient information for the Panel to evaluate the need for or implications of contract language changes.

**Recommendation:** The Panel recommends no change.

## **I. Work Week of Non-instructional Personnel**

The District proposes amending Section 8.1.1.3 to state, "Management-required meetings are included in the basic load of 40 hours per week. No 'A/C' load shall be allowed for any class starting before 4:00 p.m. on a week day."

The Faculty proposes no change to this section.

The District asserts that these changes will save costs in future years, but does not explain how those savings will be achieved for the various kinds of faculty with unscheduled hours. It asserts that District practice is a 40-hour workweek and that A/C load is not allowed for classes before 4:00 p.m. It contends that "double-dipping" occurs when a unit member teaches an overload during the workday.

The Faculty asserts that the basic workweek for faculty has been 35 hours. It equates this increase in work hours to a 14 % salary cut without any savings to the District. It argues that imposition of a higher workload at the same time as there is a reduction of compensation is punitive and unreasonable.

The Faculty also asserts there would be no cost savings from prohibiting overload classes before 4:00 p.m. It contends "double dipping" does not occur because preparation and grading often are done after 5:00 to avoid the interruptions that occur during the day. In addition, a blanket rule would not be appropriate for faculty who teach non-traditional schedules in which a large portion of their load is taught in the evening or on-line. For them, teaching an overload class before 4:00 p.m. would be reasonable.

The Panel notes that the Faculty proposed a compromise on the A/C load issue. (Un. Tab 3, Section 8.1.1.4 in UF proposal.)

The Panel notes that, in the current contract, several non-instructional positions are assigned a 40-hour week, 5 hours of which are unscheduled. However, other positions have different workweeks. Adoption of the District's language could introduce confusion in the interpretation of several sections in Article 7. The District's proposals in Article 7 would appear to reduce faculty schedule flexibility at the same time the District demands a large salary cut. In contrast, the District has allowed the classified employees unpaid

leave as compensation for reduced pay. The Panel does not find this proposal reasonable when a pay cut is necessary, especially as the District has not explained how it would achieve savings in the short term.

**Recommendation:** The Panel recommends that the following language be added to Section 8.1.1.3: "No 'A/C load shall be allowed for any class that ends before 4:00 p.m. on a week day. This limitation shall not apply to faculty who teach A contract after 4 p.m. or on the week-ends.

#### **J. English Composition Class Load**

The District proposes deleting the section of the contract which grants English Composition-type assignments a higher load than other courses. The contract reads:

A lecture course wherein an instructor is required to devote an extraordinary amount of time outside of class to criticizing and evaluating written assignments and examinations. An assignment of twelve (12) in-class hours shall be considered a full instructional load, provided that at least nine (9) hours are assigned to English Composition type courses. One hour English composition type assignment equates to .083 load.

The Faculty proposes no change to this section.

The District asserts that elimination of the higher load credit for composition classes would save \$235,000 annually. Presumably, the savings would come from assigning each English teacher five classes instead of four, and hiring fewer temporary faculty. The District also points out that the load values for a 12-hour load add to only .996 instead of 1.0 load. If an instructor teaches only 3 composition classes and one regular lecture, the instructor's load adds to only .948. The District asserts that the extra load credit for a composition class is unfair to instructors in other areas.

The Faculty notes that the extra load is only available where the instructor "is required to devote an extraordinary amount of time outside of class to criticizing and

evaluating written assignments and examinations. The typical composition course requires that each student write a minimum of 8,000 words per semester and that the teachers grade and make written comments on 25-30 essays every week for each class. The Faculty asserts that instructors spend 20 to 30 minutes per essay, about 10-15 hours per week. In addition, they spend time explaining comments to students in person.

The Faculty provided evidence that national professional organizations, the National Council of Teachers of English and the Association of Departments of English, have endorsed a standard that composition teachers teach no more than 12 hours per week of classroom teaching, teach no more than 20 students per class, and only 15 per class if the students need remedial help. The Faculty asserts that each composition class in the District has 25-30 students, more than recommended for student success. In addition, raising the number of classes per teacher could jeopardize student transfer into four-year colleges. In 1999, California State University English Council resolved that "departments will reconsider Articulation Agreements with institutions not adhering to minimal professional standards in class size and workload."

The District did not provide any evidence contradicting the Faculty's evidence that an increase in the number classes per semester will hamper the effectiveness of the composition teachers. It did not explain how the extra load credit is unfair. It appears to be looking for cost savings without regard to workload equity or student welfare. The Panel finds the cost savings are insufficient justification for the proposal.

**Recommendation:** The Panel recommends no change to Section 7.2.2.

## **K. Professional Responsibilities**

In this area, the District proposes at least 38 contract changes ranging from language delineating professional responsibilities to changes in how faculty are placed and move up the salary schedule to deletion of pay for part-time faculty office hours, pay for multiple evaluations and pay for summer hiring responsibilities.

The Faculty proposes countervailing language in the sections regarding professional responsibilities and no change to the Salary Article of the contract.

The Panel has insufficient evidence that a problem needs to be addressed and insufficient data to determine how the District's proposed salary placement guidelines and elimination of stipends for certain committee work would compare with practices among similar nearby districts. Without this information, it is difficult to evaluate the proposals.

**Recommendation:** The Panel recommends no changes to these sections.

## **L. Part-time Faculty Reappointment Rights**

The Faculty proposes a procedure for giving part-time temporary employees preferential rehire rights after contract, regular, overload, long-term substitute and categorical employees have been assigned. Part-timers generally would gain rehire rights after four semesters of service.

The District proposes no change in the contract, which contains no part-time rehire rights.

The Faculty points out that state law provides that this area is a mandatory subject of bargaining. Nine other districts in the Bay Area have agreed to reappointment rights in collective bargaining. Eight others statewide have reappointment rights in their collective bargaining agreements. The Faculty asserts that reappointment rights would help assure



the quality and consistency of the District's part-time faculty, in addition to **benefiting the** part-time faculty.

The District does not wish to grant de facto tenure to employees who are at-will employees under state law. It needs the flexibility of being able to terminate a part-time employee when classes are cancelled or state funding is uncertain. The District indicates it will negotiate this item in the next set of negotiations.

The Panel finds that reappointment rights is a matter that should be negotiated soon, but is best considered by a labor-management committee that can make recommendations to the parties in their next set of negotiations.

**Recommendation:** The Panel recommends the parties establish a labor-management committee to make recommendations to the parties in their next set of negotiations.

#### **M. Faculty Evaluations**

The Faculty proposes substantial changes to procedures regarding evaluation, **the** addition of language concerning investigations of employees, and the addition **of a** just cause requirement for discipline and dismissal. The District also proposes **large** amounts of new language in this article.

The District points out that dismissals are in no way within the scope of **bargaining** under the Government Code, and argues that the Education Code vests the District with exclusive discretion over discipline.

It is clear that the parties have not had the time to engage in the give-and-take that normally occurs when new subjects are negotiated. The Panel does not find it **fruitful to** weigh in on the large amounts of new material that will govern the parties when **the** parties have not had time to narrow their differences.

**Recommendation:** The Panel recommends no changes to this Article.

#### **N. Other Issues in the District's "Last, Best and Final Offer"**

Before the hearing, the Panel asked the parties to prioritize their issues so that the hearing could focus on those most important to the parties. The District's pre-mediation offer contained hundreds of proposed contract changes, some of which were addressed above. The District continued to include all its proposed language changes as issues for the factfinding, but listed the proposals that have not yet been discussed as third priority items. The Faculty had also proposed hundreds of modifications, but chose not to present those having to do with the grievance procedure or divisions/departments at the factfinding. The Panel does not believe it would not be productive, and might distract the parties from reaching agreement on more important items, to issue recommendations on the remaining proposals.

#### **IV. SUMMARY OF RECOMMENDATIONS**

The Chair recommends a 13.5 % salary schedule decrease effective April 1, 2005 through June 30, 2005. The Panel recommends that on June 30, 2005, the current faculty salary schedules will be decreased 4.5% until an increase is negotiated between the parties. The Panel recognizes that this is a severe cut in salaries, and therefore recognizes that the parties may wish to implement the recommended salary savings of \$2 million over the remaining three months of the year in another mutually agreeable way.

The Panel recommends that all the temporary faculty parity money the District receives from the state be used for compensation of part-time temporary faculty only and not for full-time faculty overload pay. This will mitigate the effects of the salary rollback for part-time temporary instructors, and keep their pay from sinking toward the bottom in the ranking of competing districts.

The Chair recommends that each faculty employee contribute 5% of the monthly rate for the employee's medical and dental premiums beginning April 1, 2005. Eligible part-time temporary faculty will contribute an additional amount equal to 5% of the amount of the District's medical and dental premium contributions. The Panel also recommends that a labor-management committee be established to make recommendations to the parties concerning greater cost-sharing and cost containment for health benefits.

For new hires, the Chair recommends that the eligibility for District contribution to benefits for the spouse end at the time the spouse becomes eligible for Medicare.

The Panel makes the following recommendations regarding the language of Article 8:

Addition of the following language to section 8.1.1.1:

"when a reduced number of sections, rooms, or times has been made available by management, or when management has denied faculty requests for expansion, management must present department faculty with written documentation supporting their decisions within five working days."

The language of section 8.1.1.2 should include the criteria of FTES goals and budgetary limitations.

The language of 8.1.2 should be amended to add the following language:

"Management may not change the schedule in any way that results in any of the following:

- a) More than 3 consecutive lecture hours or 4 consecutive lab hours except with the agreement of the faculty member affected.
- b) Fewer than 12 hours from the end of one day's work to the beginning of the next except with the agreement of the faculty member affected."

The Panel recommends that the following language be added to Section 8.1.1.3:

"No ' A/C load shall be allowed for any class that ends before 4:00 p.m. on a week day.

This limitation shall not apply to faculty who teach A contract after 4 p.m. or on the week-ends."

The Panel recommends that Section 8.2.5.2 be amended to limit to one the number of subsequent semesters that a faculty member may teach an overload without making up a load deficit, and that the amendment should be effective for load deficits that are incurred after July 1, 2005. The Panel also recommends language that would require a faculty member who retires or separates from the district with a load deficit to repay that deficit with any banked load credits the employee may have.

The Panel recommends the parties establish a labor-management committee to make recommendations to the parties in their next set of negotiations regarding part-time reappointment rights.

The Panel recommends that, to the extent the position of Division Chair no longer exists, the term should be deleted from the contract.

### **Concluding Remarks:**

The Panel is aware that the 2004-05 year is nearly over and that, even if the parties agree to the terms recommended in this report, the parties will be back in negotiations for 2005-06 immediately under the same difficult fiscal circumstances. The recommendations in this report are necessarily limited by the jurisdiction of the Panel and the evidence presented to the Panel. Because only the 2004-05 year was at issue, we were unable to make recommendations that could have assisted the parties in reaching a two-year agreement.

It is the Panel's opinion, however, that it would be better for the parties to reach a longer-term agreement that involved only a temporary decrease in salaries. An agreement to reduce salaries by 5.5% effective January 1, 2005 through June 30, 2006, for example, would entail less drastic cuts to paychecks in the last three months of this year and assure the faculty that their financial sacrifice is for a finite period of time, while saving the District more money next year when it will lose funding due to declining enrollment.

Dissenting/concurring opinions of Panel Members are attached.

Katherine J. Thomson

Chairperson

Ronald W. Bennett

District Panel Member

Henry C. Levy

Faculty Panel Member

Dated: March 31, 2005

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Dissenting/concurring opinions of Panel Members are attached.

Katherine J. Thomson I Chairperson	Ronald W. Bennett District Panel Member	Henry C. Levy Faculty Panel Member
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Dated: March 28, 2005

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Dissenting/concurring opinions of Panel Members are attached.

Katharine J. Thomson	Ronald W. Bennett	Henry C. Levy
Chairperson	District Panel Member	Faculty Panel Member

Dated: March 28,2005

IN FACTFINDING PROCEEDINGS PURSUANT TO  
CALIFORNIA GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3

In the Matter of a Dispute between  
  
Contra Costa Community College District  
  
and United  
  
Faculty.

CONCURRENCE/DISSENT BY  
DISTRICT PANEL MEMBER

March 25, 2005 PERB Case No.  
SF-IM-2564-E

I. INTRODUCTION

I believe that the factfinding report represents positive progress that the parties can build upon to reach ultimate resolution of their differences. But the fact remains that the gulf between the parties is very wide and deep and the number of open issues remaining is substantial. I also agree with the panel's decision to limit its attention to the highest priority issues as identified by the parties themselves. If these issues are resolved, they form the basis for further agreement; if they are not, there can be no agreement.

Beyond the specific issues before the panel, there is one issue that, though not listed, overshadows all of the other matters before the panel; that is the issue of trust and respect. I do not know the source of the insidious acrimony between the parties, but it was particularly evident in the tone and aggressive tenor of the presentations by the . Union. Rarely have I seen so little respect shown by employees toward their employer. Until the root causes of this situation are dealt with, there is likely to be little peace between the parties in future negotiations.

Finally, the jurisdiction of the panel is for one year only, 2004-05, a year that is nearly over. The problems facing the parties clearly call for a multi-year solution; one the panel is unable to offer because it lacks jurisdiction. But the lack of a multi-year solution has a dramatic and negative effect on the current year negotiation. The status quo is so slanted toward the Union that it has little reason to move quickly toward settlement of issues that would result in a rollback of salary or increased contributions for employee benefits. This causes aggravation between the parties because of accusations about stalling and serves as yet another barrier to resolution.



## 11. SPECIFIC ISSUES

### A. INABILITY TO PAY

I CONCUR with the Panel's conclusion that the district has an inability to pay. The testimony of credible witnesses called by both sides' point to loss of enrollment and decreased funding from the state of California. Additionally, the rising costs of health benefits, energy, step and column salary increases and the general level of inflation have put extraordinary pressure on district resources.

I DISSENT as to comments made by the Union and included in the report to the effect that management has somehow caused the funding problem or that management and non-represented employees represent too large a share of the budget. These two things are simply not true nor are they supported by any credible evidence. The cost of management pales in comparison to the increased cost of health benefits, the lost revenue from declining enrollment, and reductions in funding made by the State of California. This "urban legend" diffuses attention from the real issues in this case. The real issue, in my opinion, is that there just isn't enough money to sustain the high compensation levels that were possible in the past.

### B. SALARY

I CONCUR with the conclusion of the Panel that faculty salaries must be decreased in light of the District's inability to pay. The District does not assert that faculty members are overpaid; only that it does not have the funds necessary to maintain salaries at the current level.

I CONCUR with the Panel's recommendation that the salary reduction should begin as soon as possible and continue forward until a change is made in some future negotiation.

I DISSENT on the recommended amount of the salary reduction. The District argued for a reduction of 7% to be effective July 1, 2004 and to be on going into the future. The 13.5% reduction for the 3 months left in the current year, as recommended by the Panel Chair, amounts to an annual reduction of only 3.375%. Management took a full 7% reduction effective July 1, 2004. Classified employees who are paid much lower salaries than faculty members have also taken a full 7% salary cut. Though it is late in the year and difficult to reduce salaries more than the amount recommended by the Panel Chair, I am convinced that the on-going salary reduction should be 7%. This is the amount that is supported by the District's calculations, un-refuted by the Union, and is necessary to solve the District's on-going funding shortfall.

I DISSENT on the Panel's recommendation that the faculty be "given credit" for allowing use of \$800,000 set aside for sabbaticals. There has been no agreement by the faculty to allow an alternative District use of the funds and, because there

is no proposal regarding these funds in the District's Last, Best and Final offer, there can be no alternative use unless and until the Union agrees. It is therefore premature for the Panel to reduce the amount of the salary rollback by this amount.

I DISSENT on the Panel's assertion that the management and non-represented employee groups have not done enough to reduce salary costs to the District. These two groups have been reduced in size because of cutting positions, they have given a much higher salary cut than what is recommended for faculty, and they have given earlier on both salary roll-backs and benefit contributions. I believe that the Union's effort to play groups off against each other is not conducive to constructive settlement and should not be furthered by the panel.

#### C EMPLOYEE BENEFITS

I CONCUR with the Panel's conclusion that employees should be required to pay part of their health insurance premiums. I believe that cost sharing helps to not only contain the growth in costs, but also makes employees more aware of the high cost of this important part of compensation. As shown in evidence introduced by both parties, employee contributions have become the norm in community colleges as well as for employees in other industries. Few of the taxpayers that pay these benefits enjoy such a liberal plan themselves.

I DISSENT on the Panel's recommendation that the employee contribution be limited to 5% of premiums. This level of contribution is much lower than the contribution proposed by the District. The District proposed a cap on its contribution at the 2003-04 level. If that were implemented, employees would be required to pay approximately 20% of the premium for next year. The 20% level is not unreasonable when compared to other school agencies and in light of the District's significant financial problem. Although co-pays were recently adjusted upward, they are still low in comparison to those paid by employees in other districts. And it should be noted that the faculty group was the last group to accept the increased co-pays and implemented them much later than other groups and then only in exchange for the District agreeing to offer the STRS 2+2 Golden Handshake early retirement plan, the most expensive plan allowed by the State. I recommend, instead, a cap on District health benefit contributions at the 2004-05 level. A 5% contribution simply does not offer enough savings to solve the District's financial problem.

#### D. RETIREE BENEFITS

I DISSENT on the Panel's recommendation to maintain District paid health benefits for retirees. The District proposal to maintain such benefits for all current and retired employees but to cease offering them to new employees is reasonable and protects the rights of those currently receiving or anticipating receiving the benefit. Lifetime benefits at the level paid by the District are a rarity

even among community colleges and school districts. The cost is tremendous and growing rapidly. And as the Chair points out, cash will not be saved until many years into the future, but the District must begin to accrue the liability now. This unfunded liability will grow each year until it is funded by the District. We are mortgaging programs for future students by giving this benefit and not setting aside funds to pay for it. I recommend the parties agree to stop offering lifetime benefits for new employees hired after June 30, 2005.

Signed,

Ronald W. Bennett  
Panel Member for the District

March 25, 2005

## **Concurrence & Dissent, from Henry C. Levy, panel member:**

### **General Issues:**

(a) Others that represented the faculty included: Kathleen Costa, Emmanuel Akanyirige, and David Zimny. Deborah Dahl-Shanks (not Dale) was there as a witness, not as a representative of the faculty.

(b) While the mediation was needed in order to see if the parties could come to any resolution on the economic issues, the curtailment of the factfinding process resulted in virtually no chance for the faculty to present the problems that have been caused by the increase in management and centrally-controlled administrative functions over the past few years.

### **(A.) Salary for 2004-05 year:**

I concur with the recommendation of the chair to reduce faculty salary by a percentage which is equivalent to a reduction in cost equal to a 4.5% salary reduction as though that had been in place effective October 1, 2004. However, I dissent from the Chairperson's implementation of this salary reduction. The chairperson recommends a 13.5% reduction to take place over the next few months; in my opinion, this is a tremendous burden on almost every family with a faculty member who works for the District. In addition, I do not believe that this is even necessary in order to keep the fund balance from falling below the 5% level as of the end of this fiscal year. I understand that the panel has no jurisdiction beyond June 30, 2005 and it may be necessary for the parties to agree on a proper amount to accomplish this goal, if both were in agreement. (See below for my analysis of the fund balance for 2004-05 year.)

I also concur with the recommendation that the salary schedule be reduced by 4.5% on June 30<sup>th</sup> 2005 with the proviso that any agreement between the parties regarding the reduction of the hardship for the 2004-05 year may change that amount. Again, as stated above, it would be preferable and desirable to implement the salary savings in a different mutually-agreeable way, which I understand would increase the reduction for 2005-06.

Also, it is important that no salary reduction be taken from any individual in a way that would make the reduction to that individual higher than 4.5% reduction as though it had been in place effective October 1, 2004. This might be true, for example, for some part timers who may not have worked during the fall semester at all; a reduction of 13.5% as recommended by the chairperson, for instance, for the remainder of this year would be a much higher reduction to them than intended.

In my opinion, the fund balance for the 2004-05 year will end up being higher than suggested by the District's Acting Vice Chancellor for Finance Doug Roberts. His claim that the district will lose \$4.7 million is made only in a

spreadsheet projection, and is not supported by the District's own budget documents. Using more realistic projections based on current actual year expenditures, I project that the full salary reduction proposed by the chairperson would end up with a fund balance of 6.15% of current expenditures. Therefore, I believe a more gradual reduction of the 2004-05 pay into 2005-06 will accomplish the goal of keeping the fund balance above 5%. My full analysis will not be attached to this report, but it will be available upon request.

While I concur with the salary reduction, I feel it represents the faculty's short-term contribution to a financial crisis caused in equal parts by decisions made by the management of the District as by economic conditions in the state. It is clear that this salary reduction will do absolutely no good if the District does not understand that over the next immediate period it must accomplish two tasks:

- (1) begin a joint effort with faculty to plan on building enrollment, which may include a consideration of many of the non-economic issues discussed below;
- (2) address the issue of top-heavy administration at the District and the colleges, which have both increased expenditures and decreased communications between faculty and management. (Without improved communications between faculty and management, it will be extremely difficult, if not impossible, to build enrollment.)

The Chairperson deserves credit for pointing out in several places the excessive cost of managers in the district. The faculty presented in factfinding that it believes the District could save over \$2 million by reducing both the number of managers and their salaries to the averages in comparable community college districts.

In addition, as it relates to part-time faculty, I would be concerned that any further reduction in salary than recommended by the Chairperson would begin to cause the District to end up paying its hourly faculty at a level below almost all other districts in the Bay Area. The only districts that would still have lower wages for part-time faculty would be Solano, and San Joaquin-Delta, which is well outside the Bay Area.. To be in so poor a competitive position when seeking to hire temporary faculty means that the district will have a hard time getting anyone who is qualified enough to have been also offered a position by another district.

There are some other areas where money can be saved, such as the RTI centers, which the faculty demonstrated have been losing hundreds of thousands of dollars per year. The faculty has serious questions about the value of the RTI to students in the district. Although the chairperson's report notes that the District has cut its RTI expenses in anticipation of low revenues from the centers, no evidence was presented in fact-finding of such reductions in RTI expenses.

#### **(B.) Health and Welfare Benefits for the Same Period:**

I dissent from the chairperson's recommendation that a 5% contribution be made to the health premium. The salary reduction will suffice for the district's financial problems.

Such a contribution to health care serves no purpose. It is not warranted by the district's financial condition. A contribution towards healthcare is only a salary reduction in different clothes. It does nothing to control the cost of health benefits but only transfers some of that cost to employees as another reduction in compensation. Only a year ago the employees accepted a substantial contribution to the cost of health insurance in the form of a tripling of co-pays. Since there is no argument that the district needs still more money from employees, and since employees will take a substantial reduction in compensation for the remainder of this year, it seems both unnecessary and unjust to make an additional reduction in their compensation. Such a reduction on top of such a substantial salary cut would be a great financial hardship to many full-timers. It would also be particularly difficult for part-time faculty, who already get paid very little, already do less well in comparison to their counterparts in neighboring districts, and for whom the district already gets some funds from the state to partially offset the cost of health benefits.

It is important to remember that the employees of the district have never contributed to the premiums for health care and thus the report is recommending a radical change to past practice. While asking faculty to contribute may turn out to be reasonable, such a large shift in practice requires joint decision making and joint analysis, and a commitment to considering alternatives. Therefore, I do concur with the panel's recommendation for a joint committee on health benefits as part of next year's negotiations. Hopefully, the two sides can find better ways to control the cost of benefits to the district without simply reducing compensation to faculty still further. Further, a commitment to working jointly can hopefully prevent the unilateral dissemination of information, which can only continue to harm the relationships between the parties and harm their ability to control costs (see below regarding the actuarial study).

### (C.) Retiree Health and Welfare Benefits

I dissent with the recommendation of the chairperson. As the chairperson states, the recommended change would actually have no effect on the budget for a minimum of 15 years. Thus, this proposal appears to be punitive.

Future hires will all qualify for Medicare. Therefore, the district cost for retiree benefits in the future will be far less than for many current employees and current retirees who do not receive Medicare benefits. Thus there has actually already been a substantial reduction in the cost of future benefits relative to the cost of current employees and retirees. The monthly cost for insurance of those with Medicare is quite modest. There are many ways to address that cost that would be preferable to this panel's recommendation. Since that recommendation produces no savings in the current year, the chairperson's recommendation is not appropriate.

Unfortunately, the new actuarial report produced by the District during fact-finding was presented in violation of the contractual agreement that both parties agree on the assumptions for such a report.

**(D). Scheduling**

1) Substitutes: I dissent with the chairperson's recommendation of no change. The current practice where the division dean decides on whether or not a substitute is used has caused many examples of disruption in learning.

2) Teaching by Managers: I dissent with the no change recommendation by the chairperson. It is not true that managers go through the same hiring process as part-time faculty when being considered for teaching. If they did, the faculty proposal would, in fact, not be necessary. Section 6.4.3 of the contract indicates that part-time hires are subject to the same in-depth hiring process as full-time positions, in which process faculty are highly involved, but that the parties may waive these procedures for part-time hires. There are currently five managers in the District who teach and there is no evidence that they have gone (or continue to go) through the rigorous, regular evaluation process dictated by the contract for new hires. Faculty, full and part-time, go through rigorous evaluation of their qualifications as teachers when they are hired. In addition, they are evaluated regularly for their classroom performance. The requirements in the contract' regarding hiring simply do not apply to someone who has already been hired as a manager.

(3) Division Chairs: I dissent with the chairperson's recommendations to delete "Division Chairs" from the wording of the contract. This matter is still being litigated. There is no justification for removing this language from the contract prior to the resolution of that case. No one benefits from removing the language and to do so only would create an added problem should the lawsuit come out in the faculty's favor. Whatever financial settlement is reached in this dispute, the faculty will have a substantial reduction in compensation. It is inappropriate to add further recommendations that harm the faculty while providing no benefit at all to anyone.

(4) Balancing Class Sizes: I dissent from the no change recommendation with regard to decisions about canceling classes. The current process is handled unevenly. The proposed faculty-proposed change would allow a more systematic and equitable implementation of balancing enrollments; the recent mismanagement of enrollment has led to the serious enrollment decline, which has been a key contribution to the current fiscal problems. The faculty's proposal would help the district build enrollment.

I disagree with the chairperson's conclusion that the current contract enables the faculty to consult with the District on class balancing. The contract only requires the District to notify the department chair and affected faculty about class cancellations; "notification" and "consultation" are obviously different.

4) Unreasonable Schedules: I concur.

5) Distance Education: I dissent with the no change recommendation of the chairperson. The faculty was not given time in the fact finding to present justifications for their proposal. The faculty proposal aims to insure the quality of distance educational offerings. Distance education courses have been encouraged by management without adequate technical support; the lack of such support has diminished educational quality.

6) Limits on Use of Part Time Faculty: I dissent with the no change recommendation of the chairperson. The district has been violating the state standard of 75% and there is no evidence that the state will be able to enforce this standard or has any real intention of doing so. Past practice has shown that this standard is routinely left unenforced. The fact that the district may hire a few faculty provides no relief to the departments where much or most of the teaching is done by part-timers. The faculty provision did not propose an absolute limit but only that there must be some consideration of the workload created for fulltime faculty as the number of part-time faculty increases.

7) Developing Class Schedules: (a) I dissent with the Chairperson's recommendation to delete the word "chairperson" from current 8.1.1.1 for the same reasons as cited above, that since the matter is still under litigation, it serves no purpose to remove it and also that there is justification for faculty input, (b) I concur with the criteria of FTES goals of budgetary limitations and with recommendation to add language to 8.1.1.1. (c) I concur with the additional language recommended by the chairperson, except that it should be inserted into 8.1.1.2 along with the additional language proposed by the faculty for this section, which appears to have a no change recommendation by the chairperson.

8) Replacement work for cancelled classes: I dissent from the recommendation of the chairperson that Section 8.2.5.2 be amended to replace the word "three (3)" with "one (1)" and make the amendment effective for load deficits that are incurred after July 1, 2005.

I also dissent from the chairperson's recommendation that would require a faculty member who retires or separates from the district with a load deficit to repay that deficit with any banked load credits the employee may have.

Since management has discretion over schedules, there is no reason why the faculty member should have full responsibility when there is a scheduling mistake and a class does not get adequate enrollment. Many courses are routinely cancelled by management, including transfer-level classes. All of these classes represent significant preparation work for faculty and sometimes significant time meeting with individual classes and responding to student concerns about what



to do in face of cancellation. Any fair provision should give the faculty member credit for preparation time and for whatever individual class sessions are actually taught. According to the current contract language, all the faculty member actually receives by way of compensation is some flexibility about when to make up the lost class, thus the necessity for the contract change proposed by the faculty.

(9) New course minimum class sizes: I dissent from the no change recommendation. If the faculty had time to produce evidence regarding this item, they would have shown that a number of new courses were cancelled by management due to low enrollment, and that this then prevented these courses from being offered in the future. If this cancellation policy continues, the colleges' course offerings are at great risk of hardly changing and of quickly becoming outdated.

(10) Bumping Part Time Faculty: I concur with the panel's recommendation to accept the faculty proposed language to Article 8 to preventing bumping of part-time faculty by full-time faculty seeking to teach an overload, and I urge the chairperson to recommend the additional faculty proposals in Section 8.2.4.1., which are needed to protect probationary tenure-track, regular, and part-time faculty.

(E.) Load Banking: (a) I dissent from the panel's recommendation to changes in Sec. 7.11.1 and 7.11.9 to alter the maximum load banking permitted each semester. The faculty proposal, as opposed to the District's, actually helps the district's short-term fiscal problem because it relieves the district from paying for current teaching. In the case where an employee leaves the district by using some load banked time to cover some time, it is difficult to determine the savings and cost since the district saves money in the difference between what it pays the faculty member who leaves and what it pays the part-time faculty or new full time faculty member who will be hired as a replacement. The faculty member who left might not have left except for the banked load, so it is extremely difficult to specify the actual cost. What is clear, however, is that the cost is modest. The District has not provided a costing of the actual increases in this area.

(b) I also dissent from the chairperson's recommendation that faculty be told to continue to participate in all other professional responsibilities. There is no evidence, either presented in fact-finding or elsewhere, that this is a problem. This additional contract language seems punitive in intent on the part of the District.

(H.) Multiple Load Credit: I concur with the findings of the chairperson.

(I.) Work Week of Non-Instructional Personnel: I concur with the chairperson's recommendations.

(J.) English Composition Class Load: I concur with the chairperson's recommendations.

(K.) Professional Responsibilities: I concur with the chairperson's recommendation of no change.

(L.) Part-Time Faculty Reappointment Rights: I dissent from the chairperson's recommendation to form a committee to make further recommendations. The District has agreed to such a committee for at least three years, and it has consistently refused to accept any recommendations to establish part-time faculty reappointment rights.

(M.) Faculty Evaluations: I dissent with the chairperson's recommendation of no change. Had the faculty had time to present evidence, they would have demonstrated significant problems in this area. There is currently no due process for investigations; two faculty members in the last two years have lost jobs, who resigned under pressure. Several other faculty members have been investigated and intimidated to the point of fearing to turn in any expense claims.

(N.) Other Issues: Sabbatical Language: There is nothing in report which ensures that the district will fund the sabbaticals, which the faculty feels is contrary to the spirit, if not the letter of the contract. The chairperson correctly points out that the elimination of sabbaticals is a take-away in compensation.

A handwritten signature in black ink, appearing to read "Henry C. Levy", is written over a horizontal line.

Henry C. Levy Faculty  
Panel Member

Dated: March 25, 2005

## Declaration of Service by Mail

I, the undersigned, declare:

I am over the age of 18 years and not a party to this action or proceeding. My business address is 3020 El Cerrito Plaza, #333, El Cerrito, CA, 94530, Contra Costa County.

On March 31, 2005, I served the enclosed Report of Factfinding Panel by depositing a copy to each in a sealed envelope with the United States Mail at El Cerrito, Contra Costa County, CA, postage fully pre-paid, addressed to the parties, their attorneys, and others named below:

Governing Board  
Contra Costa Community College  
District  
C/o Lois Callahan, Interim Chancellor  
500 Court Street  
Martinez, CA 94553

Ron Bennett  
School Services of California  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Sue Shattuck, President  
United Faculty of Contra Costa College  
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Public Employment Relations Board  
1031 18<sup>th</sup> Street Sacramento, CA  
95814-4174

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at El Cerrito, CA on March 31, 2005.

Katherine J.